

#2017-111

Steven J. Onysko

REC'D OCT 10 2017
October 2, 2017

Nova Dubovik
Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106

Ms. Dubovik:

Subject: Appeal to State Records Committee of the Office of the Attorney General (OAG) September 19, 2017, Solicitor General Tyler Green Denial of Steven Onysko's August 8, 2017, GRAMA Request to OAG [OAG Identifier 17-182] vis-à-vis Certain Defendants in the Matter of *USA ex. rel. Mark Christopher Tracy, v. Emigration Improvement District*, Utah District Court

This communication to you is my GRAMA-related appeal per:

Title 63G-2-401. Appeal to chief administrative officer – Notice of the decision of the appeal.

...

(5)

(a) *The chief administrative officer shall make a decision on the appeal within:*

(i) *five business days after the chief administrative officer's receipt of the notice of appeal; or*

(ii) *12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.*

(b)

(i) *If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.*

Title 63G-2-402. Appealing a decision of a chief administrative officer.

(1) *If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:*

(a)

(i) *appeal the decision to the records committee, as provided in Section 63G-2-403; or*

...

(2) *A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.*

(3) *As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.*

I am aware of my following obligations:

Title 63G-2-403(2).

...

(2) The notice of appeal shall:

- (a) contain the name, mailing address, and daytime telephone number of the records committee appellant;*
- (b) be accompanied by a copy of the decision being appealed; and*
- (c) state the relief sought.*

Title 63G-2-403(3).

...

(3) The records committee appellant:

(a) shall, on the day on which the notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:

(i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or

(ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

I have attached copies of:

[Exhibit A] August 8, 2017, resubmitted initial GRAMA request [then OAG Identifier 17-039, now OAG Identifier 17-182] by Steven Onysko to the Office of the Attorney General (OAG) requesting records/documents access in the matter of U.S.A. ex.rel. Mark Christopher Tracy vs. Emigration Improvement District, et al., and other records/documents access;

[Exhibit B] August 15, 2017, OAG incomplete response to, and substantial denial of, the August 8, 2017, resubmitted initial GRAMA request;

[Exhibit C] September 5, 2017, Steven Onysko appeal to OAG Chief Administrative Officer of the August 15, 2017, GRAMA request denial by the OAG GRAMA Records Officer of the August 8, 2017, resubmitted initial GRAMA request;

[Exhibit D] September 19, 2017, OAG Solicitor General, Tyler Green, denial of Steven Onysko September 5, 2017, appeal of the OAG GRAMA Records Officer August 15, 2017, denial of the August 8, 2017, resubmitted initial GRAMA request;

Issues Causing Appellant To Seek Relief Per Title 63G-2-401(2)(b)

On August 8, 2017, Appellant requested in his GRAMA request [Exhibit A]:

1. Documentation/records that identify the dates and location of participation of Michael Georgeson and Kenneth Wilde in matters, meetings, depositions, and the like, or any other interface or interaction with OAG, in the matter of USA ex. rel. Mark Christopher Tracy, Utah District Court, Case No. 2:14-cv-00711.

On August 15, 2017, OAG's Romano responded [Exhibit B] :

" [T]he Office [of the Attorney General] has searched and found no documents that identify by date and location any meetings (of any type) that Mr. Georgeson and Mr. Wilde attended with an employee or employees of the Office."
[Underlining present in original.]

Appellant protested in his September 5, 2017, appeal [Exhibit C] to the OAG chief administrative officer that Romano deliberately misparsed Appellant's words for pretense of nonexistence of records responsive to Appellant's worded request. To wit, Romano used word games as basis to address only a 1/9th subset of the records described by Appellant:

✓ date <u>and</u> location	Wilde <u>and</u> Georgeson
x date and location	Wilde without Georgeson
x date and location	Georgeson without Wilde
x date without location	Wilde without Georgeson
x date without location	Georgeson without Wilde
x date without location	Georgeson with Wilde
x location without date	Wilde without Georgeson
x location without date	Georgeson without Wilde
x location without date	Georgeson with Wilde

Romano asserted that a single email message sent by Wilde to OAG's Melissa Hubbell, with mention of **date, but not location, of a meeting**, was not responsive to Appellant's request. Surely no reasonable person would countenance Romano's misparsing of Appellant's request.

On September 19, 2017, OAG's Green addressed [Exhibit D] Appellant's protest of Romano's misparsing:

"Your appeal challenges this determination as based on a hyper-technical reading of your request. But as Ms. Romano noted, even if this email were deemed responsive, it would still be protected under GRAMA by attorney client provision 63G-2-305(17), and work privilege 63G-2-305(18)]."

Appellant raises two objections. First, Green failed to address Appellant's appeal that Romano was nonresponsive to as many as 8 of the 9 possible combinations of meeting dates and/or locations with Wilde and/or Georgeson.

Second, Green implies that had Romano found records in any of the 9 subsets of:

"meeting dates and/or locations with Wilde and/or Georgeson"

then they, too, would be classified as protected because:

Title 63G General Government

Chapter 2 Government Records and Management Act

...

Part 3 Classification

...

63G-2-305 Protected records.

The following records are protected if properly classified by a governmental entity:

...

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

...

63G-2-305(17) Attorney-Client Privilege

There is extensive U.S. court case history that establishes that the following items of information are outside the scope of attorney-client privilege:¹

The existence of the attorney-client relationship is outside attorney-client privilege.

In re Grand Jury Subpoena (Roe v U.S.) (2d Cir 1986) 781 F2d 238, 247; *In re Michaelson* (9th Cir 1975) 511 F2d 882, 888.

The identity of the client and the nature of that client's fee arrangement is outside attorney-client privilege.

Hays v Wood (1979) 25 C3d 772, 785. However, such information may be privileged when the person invoking the privilege can show a strong probability that disclosure of the information would implicate the client in the very criminal activity for which the legal service was sought. *DeBlase v Superior Court* (1996) 41 CA4th 1279, 1285. Another exception exists when the disclosure of the client's identity would reveal the nature of the legal problem or personal confidential information about the client. *Rosso, Johnson, Rosso & Ebersold v Superior Court* (1987) 191 CA3d 1514, 1519.

The factual circumstances surrounding the attorney-client communication is outside attorney-client privilege.

Mitchell v Superior Court (1984) 37 C3d 591, 601 n3 (date on which person first consulted with attorney isn't privileged); *State Farm Fire & Cas. Co. v Superior Court* (1997) 54 CA4th 625, 640 (privilege doesn't protect fact that communication took place, or time, date, or participants in communication).

Who is the Client?

And, who is the client that Green and OAG alleges can assert 63G-2-305(17) attorney-client privilege? Four elements must be met to establish the privilege (*Upjohn Co. v. United States*, 449 U.S. 383 (1981));²

- the person or entity asserting the privilege is a "client;"
- the communication was made to a lawyer acting as a lawyer;
- the communication was made by a client to the lawyer in confidence (i.e., outside the presence of strangers) for the purpose of securing an opinion or legal services (and not to commit a crime or a tort); and
- the client has invoked and not waived the privilege.

¹ <https://blog.ceb.com/2015/07/01/whats-not-protected-by-attorney-client-privilege/>

² https://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2010/annualconference/121.authcheckdam.pdf

Neither Romano's nor Green's denial of records/access for Appellant identified a client, or established that the client asserted the privilege. Both Romano's and Green's denials fail the test of *Upjohn Co. v. United States*. OAG invocation of 63G-2-305(17) attorney-client privilege is illegitimate. And even if it were legitimate, *State Farm Fire & Cas. Co. v Superior Court* establishes that the privilege does not protect the fact of meetings taking place, nor time of, date of, or participants in, the meetings.

63G-2-305(18) Attorney Work Product

Consider,³

Determining whether documents were prepared in anticipation of litigation is a fact question governed by federal law. *PepsiCo, Inc. v. Baird, Kurtz & Dobson, LLP.*, 305 F.3d 813, 817 (8th Cir. 2002) and *St. Paul Reinsurance Co., Ltd. v. Commercial Fin. Corp.*, 197 F.R.D. 620, 627 (N.D. Iowa 2000).

The party raising the work product privilege as a bar to production bears the initial burden of proving the factual basis for the privilege. *Falkner v. General Motors Corp.*, 200 F.R.D. 620, 622 (S. D. Iowa 2001).

There is no work product protection for documents prepared in the ordinary course of business rather than for the purpose of litigation. *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 604 (8th Cir. 1977).

And,⁴

Unlike the attorney-client privilege, which provides absolute protection from disclosure, work product protection is qualified and may be overcome by need and undue hardship (*In re Seagate Tech.*, LLC, 497 F.3d 1360, 1375 (Fed. Cir. 2007).

And,⁵

Ordinary work product may be discovered upon a showing of substantial need and undue hardship. To prove need and hardship, the party seeking production must show why the desired materials are relevant and that prejudice will result from the non-disclosure of those materials. *See, e.g.*, *Loctite Corp. v. Fel-Pro, Inc.*, 667 F.2d 577, 582 (7th Cir. 1981); *Condon v. Petacque*, 90 F.R.D. 53, 54-55 (N.D. Ill. 1981) (noting that the burden of showing substantial need is lessened the further the material is from the attorney's mental processes and impressions).

³ <http://www.ned.uscourts.gov/internetDocs/cle/2010-07/WorkProductDoctrineNonAtty.pdf>

⁴ https://apps.americanbar.org/litigation/committees/intellectual/roundtables/0308_outline.pdf

⁵ https://jenner.com/system/assets/assets/8948/original/2015Jenner_26BlockAttorney-ClientPrivilegeHandbook.pdf

On August 8, 2017, Appellant requested [Exhibit A]:

1. Documentation/records that identify the dates and location of participation of Michael Georgeson and Kenneth Wilde in matters, meetings, depositions, and the like, or any other interface or interaction with OAG, in the matter of USA ex. rel. Mark Christopher Tracy, Utah District Court, Case No. 2:14-cv-00711.

On August 15, 2017, OAG's Romano responded [Exhibit B] :

These same protections apply to second category of documents sought by you under Part 1 of your GRAMA request. Here, a careful search of OAG records for "any other interface or interaction" between the OAG and Messrs. Georgeson and Wilde has revealed 58 pages of email correspondence between Ms. Hubbell and Mr. Georgeson, Mr. Wilde, or both. Those communications began on June 14, 2016 and ended on June 20, 2016, when the Tracy matter became assigned to other employees in the OAG. That same search also identified an additional 477 pages of email correspondence regarding the Tracy matter, nineteen (19) pages of which contain correspondence between OAG Rebecca Parr and Mr. Wilde and four (4) pages of which contain correspondence between Ms. Parr and Mr. Georgeson. Because these communications pertain directly to a matter under litigation, they are protected under Utah Code§ 63G-2-305 (17) and (18).

Appellant protested in his September 5, 2017, appeal [Exhibit C] to the OAG chief administrative officer that Romano again misparsed Appellant's words to misconstrue "with OAG" to mean only "with OAG employees."

On September 19, 2017, OAG's Green addressed [Exhibit D] Appellant's protest of Romano's additional misparsing:

You ask that the OAG "unambiguously acknowledge" that its records search extended beyond OAG employees to include "OAG agents." Presumably you are referring to Mr. Shane Bekkemellom, who is not an OAG employee but is an assistant to AAG Craig Anderson and is specifically referenced in your request. Having investigated this issue, I can confirm that the Office's records search encompassed all records owned or maintained by the OAG, including those of OAG agents such as Mr. Bekkemellom.

While Green's statement does address Appellant's interest in Wilde and Georgeson interface with non-OAG employee Shane Bekkemellom, Green does not address Appellant's interest in OAG contractors. Appellant himself witnessed a meeting in the Multi-State Agency Office Building involving Wilde, Georgeson, OAG's Hubbell, and multiple attendees with building visitor badges, at least two flanking Hubbell in obvious alliance with OAG.

Green further asserted [Exhibit C]:

Your appeal challenges the sufficiency of this response, asserting that it fails to adequately describe the records or portions of records withheld, as required under Utah Code § 63G-2-205(2)(a). That provision, however, does not require a more detailed description than what was provided, which includes details about the type, amounts, dates, and categories of records withheld. Section 205(2)(a) also recognizes that the description must not "disclose private, controlled, or protected information." Because the records withheld are adequately described in Ms. Romano's response, and any further description would likely disclose protected information, your appeal regarding Subpart 1 B is denied.

Consider:

Title 63G General Government

Chapter 2 Government Records and Management Act

Part 2 Access to Records

...

63G-2-205 Denials.

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

Appellant submits to the State Records Committee that Romano's statement [Exhibit B]:

That same search also identified an additional 477 pages of email correspondence regarding the Tracy matter, nineteen (19) pages of which contain correspondence between OAG Rebecca Parr and Mr. Wilde and four (4) pages of which contain correspondence between Ms. Parr and Mr. Georgeson. Because these communications pertain directly to a matter under litigation, they are protected under Utah Code§ 63G-2-305 (17) and (18). Consequently, for the reasons set forth above, the OAG hereby denies in total part 1 of [OAG Identifier]Request No. 17-182.

does not rise to the level of 63G-2-205(2)(a)-required description of the denied records for principal reason of omission of record dates. Appellant's foundational purpose in making GRAMA requests to OAG has been to determine if the dates of Wilde-Georgeson interaction with OAG coincide with dates of interest to Appellant for reasons beyond the purview of the State Records Committee.

No reasonable person would accept that 63G-2-205(2)(a)-required "description of a record" does not require identification of the record date. And, as previously cited, 63G-2-305 (17) attorney-client privilege does not extend to date of, time of, and participants in, meetings.

Green's argument that, *any further description would likely disclose protected information*, has no basis in GRAMA. 63G-2-205(2)(a) has no equivocal language, no usage of "likely." And, there is no provision in GRAMA that supports any argument that the date of a record is private, controlled, or protected information or is information exempt from disclosure under Subsection 63G-2-201(3)(b).

Consider the *argumentum ad absurdum*, using Romano's logic, that the public could never be informed by OAG of any pending legal proceedings in courts because such communications pertain directly to matter under litigation. No reasonable person would agree that the date of a record has 63G-2-305 (17) and (18) protection from 63G-2-205(2)(a)-required description in denial of GRAMA request fulfillment.

On August 8, 2017, Appellant requested [Exhibit A]:

2. Documentation/records that identify who was pre-notified and/or notified of the time specific events that were scheduled to occur, and/or did occur, with respect to Michael Georgeson and Kenneth Wilde depositions, meetings, etc., with State employees or State agents present in the matter of USA ex. rel. Mark Christopher, Utah District Court, Case No. 2:14-cv-00711 on any date including the one presumed occasion in middle to late 2016. The documentation/records shall include Google calendar notices, e.g., via email, and the like, which OAG and other State agencies, and their employees, utilize.

On August 15, 2017, OAG's Romano responded [Exhibit B] :

The Office denies Parts 2 and 4 because it has searched but found no responsive records.

Appellant protested in his September 5, 2017, appeal [Exhibit C] to the OAG chief administrative officer that with respect to Part 2 denial:

Appellant finds this statement to be nonresponsive. No reasonable person would believe Romano's implication that a legitimate search was conducted. No reasonable person would believe that OAG meetings transpire without pre-notification of the parties, or without OAG meeting invitees/participants annotating their appointment calendars. Appellant seeks remedy in the form of OAG again searching its records, and providing Appellant a description of what records were searched, including the identities of persons whose email correspondence was reviewed for meeting pre-notification emails and such. Those identities should at least include the afore-mentioned Melissa Hubbell and Rebecca Parr.

On September 19, 2017, OAG's Green addressed [Exhibit D] Appellant's protest:

Your appeal challenges the Office's determination that, despite a reasonable search, no records responsive to this part of your request were found. You have not offered any evidence or persuasive argument to support your contention that the search performed was not reasonable. Nor have you cited any authority for your request that the Office provide you with "a description of what records were searched, including the identities of persons whose email correspondence was reviewed." GRAMA does not require a governmental entity to provide such information. Therefore, your appeal as to this part of your request is denied. [Emphasis added.]

Appellant refutes Green's assertions for two reasons. First, there is no evidence that OAG's Romano conducted a "reasonable search," for records and documents. "Reason-able" literally means that using human reasoning, a person can weigh facts and evidence, and then make conclusions. Neither Romano nor Green present facts or evidence of the search, so a "reasonable" person has no basis to conclude that a "reasonable search" was conducted by Romano.

Second, Appellant argues that a records access denial predicated on a records search that yields no responsive records is nonetheless every bit a 63G-2-205 denial as is a records access denial on the basis of the records being protected.

Consider:

Title 63G General Government

Chapter 2 Government Records and Management Act

Part 2 Access to Records

...

63G-2-205 Denials.

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

Indisputably, OAG's Romano denied Appellant's access to at least one OAG employee's emails because Romano asserts that a search was conducted. For the sake of argument, let us assume that Romano facilitated a search of OAG Rebecca Parr's emails. Per 63G-2-205(2), Romano's denial of Appellant access to Parr's emails for any reason -- e.g., only protected records were found, or no responsive records were found -- requires a 63G-2-205(2)(a)-conforming denial. Any reasonable person would agree that, in the aforementioned hypothetical case of OAG Rebecca Parr's email search yielding no responsive records, the 63G-2-205(2)(a) description of records to which access was denied, even for just nonresponsive reason, would include allusion to Rebecca Parr.

Appellant argues that OAG Green's assertion that, *GRAMA does not require a governmental entity to provide such information*, is erroneous.

On August 8, 2017, Appellant requested [Exhibit A]:

3. Documentation/records that show Google Calendar, or similar convention, events' entries, and time allocations, for OAG's Craig Anderson, Melissa Hubbell (since retired), and Shane Bekkemellom, on all days in 2016 when Michael Georgeson and Kenneth Wilde had any interface or interaction with OAG in the matter of USA ex. rel. Mark Christopher Tracy, Utah District Court, Case No. 2:14-cv-00711.

On August 15, 2017, OAG's Romano responded [Exhibit B] :

Part 3 is denied in part because the Office has searched but found no calendar entries or other similar conventions that would detail meetings or scheduled interactions with Messrs. Georgeson and Wilde and Messrs. Anderson or Bekkemellom, Ms. Hubbell, or any other member of the OAG. The OAG also denies Part 3 on the basis that all the email correspondence between Messrs. Georgeson and Wilde and attorneys of this Office are privileged records, protected both by the attorney client and work product privilege and Utah Code§ 63G-2-305(17) and (18).

Appellant protested in his September 5, 2017, appeal [Exhibit C] to the OAG chief administrative officer that with respect to Part 3 denial:

Romano's response is nonresponsive in regard to failure to address Appellant's request for calendar, and such, records to allow him to determine if Anderson, Hubbell, and Bekkemellom were present in OAG offices on the same days as Wilde's and Georgeson's presence or other interface (e.g., deposition in non-OAG office space on the same floor or building).

And, in the absence of 63G-2-205(2)(a)-required description of the records for which Romano invokes 63G-2-305(17) and (18) protected record status, unilateral invocation of protected record status for the cited email correspondence is illegitimate.

On September 19, 2017, OAG's Green addressed [Exhibit D] Appellant's protest:

You again assert that the Office failed to provide an adequate description of any records responsive to this part of your request that were withheld. But Ms. Romano's response clearly states that no records responsive to this part of your request were found. Therefore, no further description was possible or required.

On August 8, 2017, Appellant requested [Exhibit A]:

4. Documentation/records that show any involvement of Craig Anderson or Shane Bekkemellom in the OAG chain of custody of any information or evidence provided by Michael Georgeson and Kenneth Wilde in matters, meetings, depositions, and the like, or any other interface or interaction with OAG, in the matter of USA ex. rel. Mark Christopher Tracy, Utah District Court, Case No. 2:14-cv-00711. This shall include but not be limited to (i) Anderson's or Bekkemellom's composition of emails, or communications, (ii) their signed/initialed or otherwise implied-association records, and (iii) any other implying documentation/record that Anderson or Bekkemellom have knowledge of Georgeson's and Wilde's representations in the matter of USA ex. rel. Mark Christopher Tracy, Utah District Court, Case No. 2:14-cv-00711.

On August 15, 2017, OAG's Romano responded [Exhibit B] :

The Office denies Parts 2 and 4 because it has searched but found no responsive records.

Appellant protested in his September 5, 2017, appeal [Exhibit C] to the OAG chief administrative officer that with respect to Part 4 denial:

Appellant finds this statement to be nonresponsive. No reasonable person would believe Romano's implication that a legitimate search was conducted. No reasonable person would believe that the Environment Division Director, Anderson, or Anderson's assistant, Bekkemellom, have no records trail with respect to known participation of Wilde and Georgeson in events in Environment Division offices. Appellant seeks remedy in the form of OAG good-faith effort to respond truthfully and fully to Appellant's request.

On August 8, 2017, Appellant requested [Exhibit A]:

5. Documentation/records of any material statements or evidence, including but not limited to copies of the legal depositions themselves, provided/given by Michael Georgeson and Kenneth Wilde in the matter of USA ex. rel. Mark Christopher Tracy, Utah District Court, Case No. 2:14-cv-00711.

On August 15, 2017, OAG's Romano responded [Exhibit B] :

The OAG must also deny Part 5 of your GRAMA request because, by its very terms, Part 5 seeks statements or information protected under GRAMA under subsection -305(17) and (18). But materials provided by and/or communications had with Messrs. Georgeson and Wilde regarding a matter under litigation and for which they were named-defendants is the touchstone protected communication and conduct.

On September 5, 2017 [Exhibit C], Appellant appealed:

OAG's response is nonresponsive to the request by Appellant. Appellant gives OAG the benefit of the doubt as to whether or not the denial is deliberately nonresponsive.

To wit, Appellant requested "[d]ocumentation/records of any material statements ... provided/given by Michael Georgeson and Kenneth Wilde ..." Romano erroneously interpreted Appellant's request for, "statements or information protected under GRAMA under subsection -305(17) and (18) ... materials provided by and/or communications had with Messrs. Georgeson and Wilde regarding a matter under litigation ..."

Appellant seeks remedy in the form of OAG ceasing to misinterpret Appellant's request as a request for materials themselves, and OAG making good-faith effort to provide Appellant records of what materials, not the materials' contents.

Relief Sought by Appellant for the Chief Administrative Officer's September 19, 2017, 63G-2-401(5)(b)(i) Denial

OAG has failed to provide Appellant with an accounting of the preponderance of *de facto* denied records vis-à-vis his original August 8, 2017, GRAMA request [Exhibit A].

Appellant seeks relief in the form of Committee Order to OAG to fulfill Appellant's August 8, 2017, resubmitted original GRAMA request [Exhibit A] to the fullest extent to which he is entitled per GRAMA. This includes:

1. Appellant seeks Committee finding that 63G-2-305(17) Attorney-Client Privilege does not extend to place of, date of, time of, or participants in a meeting.
2. Appellant seeks Committee finding that 63G-2-305(18) Work Product Privilege does not extend to place of, date of, time of, or participants in a meeting.
3. Appellant seeks Committee finding that OAG Romano's word misparsing with respect to "all meeting dates and locations with Wilde and Georgeson" is not moot because of (1) and (2), but is subterfuge to illegitimately deny Appellant records access.
4. Appellant seeks Committee finding that 63G-2-205(2)(a)&(b) records denial requirements are not fulfilled with sweepingly vague descriptions such as:

58 pages of email correspondence between Ms. Hubbell and Mr. Georgeson, Mr. Wilde, or both. Those communications began on June 14, 2016 and ended on June 20, 2016, when the Tracy matter became assigned to other employees in the OAG. That same search also identified an additional 477 pages of email correspondence regarding the Tracy matter, nineteen (19) pages of which contain correspondence between OAG Rebecca Parr and Mr. Wilde and four (4) pages of which contain correspondence between Ms. Parr and Mr. Georgeson. "

and that 63G-2-205(2)(a)&(b)-compliant denial requires description of each record of denied access in the form of at least the document date.

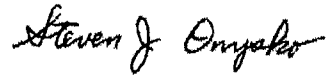
5. Appellant seeks Committee finding that 63G-2-205(2)(a) records denials may not omit description of the records because description "**would likely** disclose [private, controlled, or] protected information," but only if disclosure "**does not** disclose private, controlled, or protected information ..."
6. Appellant seeks Committee determination that a government entity's records search that returns no findings requested by the GRAMA requester constitutes a 63G-2-205 denial and therefore all requirements of 63G-2-205 must be fulfilled in responding to the records access request.
7. Appellant seeks Committee determination that OAG's unfruitful "reasonable search" denial does not rise to the level of 63G-2-205(2)(a)-conforming denial of records access, and that a description of the unfruitfully searched records is required of OAG to fulfill the requirement of 63G-2-205(2)(a).

8. Appellant seeks Committee determination that Appellant's request of documentation/ records of material statements provided/given by Georgeson and Wilde does not constitute request for the content of material statements provided/given by Georgeson and Wilde, and therefore OAG's denial on the basis of protected content is illegitimate.

9. Appellant seeks relief in the form of Committee-obliged *Schroeder v. Utah Attorney General's Office*⁶ consideration that any records identified responsive to his GRAMA request, but which would be denied strictly for classification restriction purposes, be released by the Committee if its finding is of interests favoring disclosure outweighing those favoring nondisclosure.

⁶ *Schroeder v. Utah Attorney General's Office*, 358 P.3d 1075, ¶ 19 (Utah 2015)

Respectfully,

A handwritten signature in cursive script that reads "Steven J. Onysko".

Steven J. Onysko

cc: Nova Dubovik, Executive Secretary, Utah State Records Committee, ndubovik@utah.gov
Rosemary Cundiff, Utah State Archives and Records Service Ombudsman, roundiff@utah.gov
Lonnie Pehrson, Assistant Attorney General, lpehrson@agutah.gov
Paul Tonks, Utah Assistant Attorney General, ptonks@agutah.gov
Steven Onysko,